

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 655

Introduced by Assembly Member Emmerson

February 25, 2009

An act to amend Sections 21702.5, 21705, 21707, 21708, 21709, and 21713.5 of, and to repeal Sections 21706 and 21710 of, the Business and Professions Code, relating to self-service storage facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 655, as amended, Emmerson. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if an owner sends an occupant a preliminary lien notice by certified mail, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property to safe keeping. However, if the owner sends the preliminary lien notice by first-class mail with certificate of mailing, the owner may not remove the property for at least 14 days following the effective date of the lien. Existing law requires owners to send occupants a notice of lien sale stating that the property will be sold to satisfy the lien after a date not less than 14 days following the date of mailing unless the amount of the lien is paid or the occupant returns a declaration in opposition to lien sale in a specified form. Existing law specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to lien sale. Existing law requires that a lien sale be advertised in a newspaper of general circulation in the judicial district where the sale is to be held, or posted in conspicuous places in

the neighborhood of the proposed sale, as specified, and provides that prior to a lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and reasonable expenses incurred for particular actions taken. Existing law provides that an owner may assess a reasonable late payment fee if an occupant does not pay the entire amount of the rental fee, as specified based upon the amount of the rent.

This bill would provide that, if the occupant has not paid the full amount specified by the date in the preliminary lien notice, the lien will attach as of that date and the owner may deny the occupant access to the space, enter the space, and remove any property to safe keeping. The bill would require the owner to send the occupant a notice of lien sale stating that: the property will be sold to satisfy the lien after a specified date that is not less than 21 days from the date of mailing; the occupant may regain full use of the space by paying the full lien amount prior to the specified date; the occupant may challenge the lien sale by filing an action in a court having jurisdiction as specified; and other information, as specified. The bill would eliminate the occupant's right to return a declaration in opposition to lien sale. ~~The bill would provide that the lien sale be advertised in a commercially reasonable manner of public notice, as specified.~~ The bill would provide that prior to any lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance, in which case the owner would retain the property pending a court order directing the disposition of the property. The bill would also prescribe procedures to be followed if a court order is not obtained. The bill would provide that an owner may assess a late fee equal to the greater of \$20 or 20% of the monthly rent, and may recover reasonable expenses incurred in collecting rent and enforcing a lien.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21702.5 of the Business and Professions
- 2 Code is amended to read:
- 3 21702.5. (a) Any lien on a vehicle or vessel subject to
- 4 registration or identification under the Vehicle Code which has
- 5 attached and is set forth in the documents of title to the vehicle or

1 vessel shall have priority over any lien created pursuant to this
2 chapter.

3 (b) Any lien created pursuant to this chapter on a vehicle or
4 vessel subject to registration or identification under the Vehicle
5 Code shall be enforced in accordance with the provisions of Section
6 3071 of the Civil Code, in the case of a vehicle, or Section 503 of
7 the Harbors and Navigation Code, in the case of a vessel, and not
8 as prescribed in Sections 21705 to 21711, inclusive.

9 (c) Any lien created pursuant to this chapter on a vehicle or
10 vessel subject to registration or identification under the Vehicle
11 Code shall not include any charges for rent, labor, or other services
12 incurred pursuant to the rental agreement, accruing more than 60
13 days after the date the lien imposed pursuant to this chapter
14 attaches, as set forth in Section 21705, and before application is
15 made for authorization to conduct the lien sale pursuant to the
16 requirements of Section 3071 of the Civil Code or Section 503 of
17 the Harbors and Navigation Code.

18 (d) Any proceeds from a lien sale shall be disposed of pursuant
19 to Section 3073 of the Civil Code, in the case of a vehicle, or
20 Section 507.5 of the Harbors and Navigation Code, in the case of
21 a vessel.

22 SEC. 2. Section 21705 of the Business and Professions Code
23 is amended to read:

24 21705. (a) If the notice has been sent as required by Section
25 21703 and the total sum due has not been paid within 14 days of
26 the termination date specified in the preliminary lien notice, the
27 lien imposed by this chapter attaches as of that date and the owner
28 may do all of the following:

- 29 (1) Deny an occupant access to the space.
30 (2) Enter the space.
31 (3) Remove any property found therein to a place of safe
32 keeping.

33 (b) Upon taking the actions described in subdivision (a), the
34 owner shall send to the occupant a notice of lien sale, addressed
35 to the occupant's last known address, and to the alternative address
36 specified in subdivision (b) of Section 21712, by certified mail or
37 by first-class mail, if the owner obtains a certificate of mailing,
38 postage prepaid,

39 that states all of the following:

1 (1) That the occupant's right to use the storage space has
2 terminated and that the occupant no longer has access to the stored
3 property.

4 (2) That the stored property is subject to a lien, the current
5 amount of the lien, and that the lien will continue to increase if
6 rent is not paid.

7 (3) That the property will be sold to satisfy the lien after a
8 specified date that is not less than 21 days from the date of mailing
9 the notice.

10 (4) A statement that the occupant may regain full use of the
11 space by paying the full lien amount prior to the date specified in
12 paragraph (3).

13 (5) A conspicuous statement that the occupant may challenge
14 the sale by filing an action in any court having jurisdiction to render
15 a judgment in the amount of the lien.

16 (6) That any excess proceeds of the sale over the lien amount
17 and costs of sale will be retained by the owner and may be
18 reclaimed by the occupant or claimed by another person at any
19 time for a period of one year from the sale and that thereafter the
20 proceeds will escheat to the county in which the sale is to take
21 place.

22 SEC. 3. Section 21706 of the Business and Professions Code
23 is repealed.

24 SEC. 4. Section 21707 of the Business and Professions Code
25 is amended to read:

26 21707. ~~(a) After the expiration of the time given in the notice~~
27 ~~of lien sale, pursuant to subdivision (b) of Section 21705,~~

28 ~~or following the failure of a claimant to pay rent or obtain a court~~
29 ~~order pursuant to Section 21709, the sale shall be advertised and~~
30 ~~the personal property shall be sold~~ *an advertisement of the sale*
31 *shall be published once a week for two weeks consecutively in a*
32 *newspaper of general circulation published in the judicial district*
33 *where the sale is to be held. The advertisement shall include a*
34 *general description of the goods, the name of the person on whose*
35 *account they are being stored, the space number of the occupant,*
36 *and the name and location of the storage facility. If there is no*
37 *newspaper of general circulation published in the judicial district*
38 *where the sale is to be held, the advertisement shall be posted at*
39 *least 10 days before the sale in not less than six conspicuous places*
40 *in the neighborhood of the proposed sale. The sale shall be*

1 *conducted* in a commercially reasonable manner. After deducting
2 the amount of the lien and costs of sale, the owner shall retain any
3 excess proceeds of the sale on the occupant's behalf. The occupant,
4 or any other person having a court order or other judicial process
5 against the property, may claim the excess proceeds, or a portion
6 thereof sufficient to satisfy the particular claim, at any time within
7 one year of the date of sale. Thereafter, the owner shall pay any
8 remaining excess proceeds to the treasury of the county in which
9 the sale was held.

10 ~~(b) Advertising of a lien sale shall be deemed to be in a~~
11 ~~commercially reasonable manner if it is by any method of public~~
12 ~~notice reasonably calculated to inform potential buyers and other~~
13 ~~interested parties that the property will be sold on a specified date,~~
14 ~~including, but not limited to, posting notice of sale at the facility~~
15 ~~or on the owner's self-service storage facility Internet Web site~~
16 ~~not less than 10 days before the sale, advertising in a local~~
17 ~~publication in which sales of used personal property are advertised,~~
18 ~~or direct communications with potential buyers of used personal~~
19 ~~property by mail, delivery service, or electronic means.~~

20 SEC. 5. Section 21708 of the Business and Professions Code
21 is amended to read:

22 21708. Any person who has a perfected security interest under
23 Division 9 (commencing with Section 9101) of the Commercial
24 Code may claim any personal property subject to the security
25 interest and subject to a lien pursuant to this chapter by paying the
26 total amount due, as specified in the preliminary lien notice, for
27 the storage of the property. Upon payment of the total amount due,
28 the owner shall deliver possession of the particular property subject
29 to the security interest to the person who paid the total amount
30 due. The owner shall not be liable to any person for any action
31 taken pursuant to this section if the owner has fully complied with
32 the requirements of Sections 21704 and 21705.

33 SEC. 6. Section 21709 of the Business and Professions Code
34 is amended to read:

35 21709. Prior to any sale pursuant to Section 21707, any person
36 claiming a right to the goods may pay the amount necessary to
37 satisfy the lien together with one month's rent in advance. In that
38 event, the goods shall not be sold, but shall be retained by the
39 owner pending a court order directing the disposition of the
40 property. If a court order is not obtained within 30 days following

1 the date of the payment pursuant to this section, the claimant shall
2 pay the owner the monthly rental charge for the space where the
3 property is stored pursuant to the terms of the rental agreement. If
4 the claimant does not pay this rent, the owner may sell or dispose
5 of the personal property in accordance with Section 21707. The
6 owner shall have no liability for the sale or other disposition of
7 the personal property to any claimant who fails to secure a court
8 order or pay the required rental charge as provided in this section.

9 SEC. 7. Section 21710 of the Business and Professions Code
10 is repealed.

11 SEC. 8. Section 21713.5 of the Business and Professions Code
12 is amended to read:

13 21713.5. (a) The owner of a self-service storage facility may
14 assess a late payment fee if an occupant does not pay the entire
15 amount of the rental fee specified in the rental agreement, subject
16 to the following requirements:

17 (1) No late payment fee shall be assessed unless the rental fee
18 remains unpaid for at least 10 days after the date specified in the
19 rental agreement for payment of the rental fee.

20 (2) The amount of the late payment fee shall be specified in the
21 occupant's rental agreement.

22 (3) Only one late payment fee shall be assessed for each rental
23 fee payment that is not paid on the date specified in the rental
24 agreement.

25 (4) The late payment shall not exceed the greater of twenty
26 dollars (\$20) or 20 percent of the monthly rent.

27 (b) An owner may recover from the occupant any reasonable
28 expenses incurred in collecting rent and enforcing a lien created
29 pursuant to this chapter.